

Message Text

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TO AMEMBASSY MONTEVIDEO

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TAGS: CGEN

SUBJECT: ARTICLE 36, VIENNA CONVENTION ON CONSULAR RELATIONS -- APPLICATION TO DUAL NATIONALS

REFS; (A) MONTEVIDEO L2; (B) STATE L67653; (C) STATE A-8073

(OCT. 23, 1974)

L. EMBASSY REQUESTED CLARIFICATION OF DEPARTMENT'S INTERPRETATION OF ARTICLE 36, VIENNA CONVENTION, AS THAT ARTICLE PROVIDES RIGHTS FOR CONSULAR OFFICERS AND DETAINED SENDING STATE NATIONALS. SPECIFICALLY, EMBASSY INQUIRED AS TO THE APPLICABILITY OF THAT ARTICLE TO PERSONS WHO ARE REGARDED BY THE RECEIVING STATE AS ITS NATIONALS, WHILE AT THE SAME TIME REGARDED BY THE SENDING STATE AS NATIONALS OF THAT STATE. AS DEPARTMENT HAS PREVIOUSLY STATE (SEE REFS B AND C), LANGUAGE OF ARTICLE 36 DOES NOT PRECLUDE ITS APPLICATION TO DUAL NATIONALS; HOWEVER, THERE IS NO SPECIFIC LANGUAGE IN THE VIENNA CONVENTION, AND NOTHING IN THE BACKGROUND OF ITS DRAFTING, WHICH PROVIDES BASIS FOR DEMAND BY SENDING STATE ON LEGAL GROUNDS THAT CONSULAR NOTIFICATION AND ACCESS BE ALLOWED IN CASES INVOLVING PERSONS OF DUAL NATIONALITY. BECAUSE OF THIS FACT, DEPARTMENT HAS SOUGHT SEPARATE BILATERAL AGREEMENTS WITH COUNTRIES IN WHICH THE PROBLEM IS MOST ACUTE. UNDER THESE AGREEMENTS THE RECEIVING STATE IS REQUIRED TO PROVIDE CONSULAR NOTIFICATION AND ACCESS IN CASES INVOLVING DUAL NATIONALS IF IN FACT IT HAS

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GRANTED ENTRY TO SUCH PERSONS ON DOCUMENTATION WHICH DEMON-

STRATES THEIR SENDING STATE CITIZENSHIP.

2. IN THE ABSENCE OF A SPECIFIC AGREEMENT ON THE TREATMENT OF DUAL NATIONALS, THE BEST APPROACH FOR THE EMBASSY TO FOLLOW IN SPECIFIC CASES IS TO SEEK RECEIVING STATE COOPERATION AND CONFIRMATION THAT DETAINED PERSONS ARE ENTITLED TO SENDING STATE PROTECTION ON GROUND THAT THEY HAVE HELD THEMSELVES OUT IN THE RECEIVING STATE TO BE SENDING STATE NATIONALS AND IN FACT DESIRE SENDING STATE PROTECTION. SUCH ARGUMENTS CAN BE USED ONLY TO THE LIMIT OF DIPLOMATIC PERSUASION AND DO NOT AFFORD BASIS FOR FORMAL PROTEST ON LEGAL GROUNDS.

3. IF, IN FACT, EMBASSY BELIEVES THAT SITUATION IN THE COUNTRY IS SUFFICIENTLY SERIOUS TO WARRANT US PROPOSAL FOR AGREEMENT WITH RECEIVING STATE ON TREATMENT OF DUAL NATIONALS, DEPARTMENT WILL ADVISE ON POSSIBLE METHODS FOR CONCLUDING SUCH AN AGREEMENT. INGERSOLL

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